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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,528	04/07/2006	Alwin Hermann Schwitzer	1-17013	8981
1678 7590 08/18/2008 MARSHALL & MELHORN, LLC FOUR SEAGATE - EIGHTH FLOOR TOLEDO, OH 43604				
EXAMINER				
NILAND, PATRICK DENNIS				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
08/18/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,528

Applicant(s)

SCHWITZER ET AL.

Examiner

Patrick D. Niland

Art Unit

1796

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-25 and 28-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-25 and 28-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/27/08 has been entered.

The amendment of 5/27/08 has been entered. Claims 18-25 and 28-37 are pending.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 18-25 and 28-37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

A. There is not basis in the originally filed specification for the recitation of "parts by weight" of the amended claims. New matter may not be added to an RCE.

5. Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. It is unclear what invention claim 28 is directed towards because it depends from a cancelled claim.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 18-25 and 28-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6211266 Weber et al. in view of EP 409115 A2 Schmid et al. (translation provided and referenced) and EP 345648 A2 Schmid et al. (translation provided and referenced).

Weber et al. discloses polyamide compositions containing partly crystalline polyamide A which falls within the scope of the instantly claimed component A)a) and its amount, C which encompasses the instantly claimed component A)b.1) and its amount, components D and E which fall within the scope of the instantly claimed components B and C and their amounts, component B which encompasses the instantly claimed component A)b.2 and its amount. See the abstract and the remainder of the disclosure of Weber. All polymers have some amorphous character necessarily and therefore the portion of the polyamides of Weber falling within the scope of the amounts of the instantly claimed component A)c) fall within the scope of the amorphous polyamides A)c) of the instant claims.

Weber does not disclose the specific polymers b) of the instant claims. The instant specification states that the instantly claimed polymers b.1 and b.2 are those of the cited Schmid references.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the instantly claimed mixtures of ingredients and amounts thereof in the compositions of Weber including the instantly claimed components b.1 and/or b.2 in the instantly claimed amounts in the compositions of Weber because, as stated above, Weber encompasses such polyamides in their compositions, and the benefits of these graft polyamides described in the above cited Schmid et al. references would have been expected in the compositions of Weber containing these graft polyamides. See Schmid (EP 345648 A2), page 4 in its entirety, page 10, lines 20-23 which states that these polyamides may be used in polymer blends and will give the benefits described to these blends and the other graft polyamide properties described by Schmid would also be expected in such polymer blends. See the entire document, particularly page 16, lines 1-14 and the figures. See Schmid (EP 409115 A2), page 1, lines 1-2 and 21-22 of text after the "Applicant" line, page 2 in its entirety, page 4, lines 10-22, table 2 of page 5, and the remainder of the document. The benefits described for these graft polyamides by Schmid would also be expected in such polymer blends of Weber. Given the similarities of the compositions of the instant claims and those of Weber, it is not seen that the compositions of Weber would not necessarily have the broadly claimed properties of the instant claims with or without the above discussed modifications.

The argument that nothing in Weber discloses component C as being branched grafted polyamides ignores the teachings of the secondary references which are cited as rationale to use the instantly claimed components b1 and/or b2. Weber encompasses branched grafted polyamides and does not teach away from their use. The instant claims recite no language excluding the unsaturated nitrile copolymers of Weber. The argument that there is not

motivation in Weber to combine it with the cited Schmid et al. references is not persuasive because the Schmid references give the motivation to modify the styrene/maleimide copolymers of Weber into those of the instant claims for the reasons stated in the cited Schmid et al. references and as discussed above. The arguments to only Weber do not address the full scope of the rejection, particularly the combination of Weber with the Schmid et al. references. The argument that a semicrystalline and amorphous polyamide are required by a and c of component A of claim 18 ignores the fact that the scopes of these terms overlaps, e.g. semicrystalline has amorphous segments and therefore is both semicrystalline and amorphous. The recited "partly crystalline polyamide" of Weber therefore meets both a and c of the instant claims since there are insufficient limitations in the instant claims to distinguish these components from the partly crystalline polyamide of Weber. It is noted that "partly crystalline" clearly implies that there is a part that is not crystalline. The only other option is amorphous. The applicant's arguments in this regard are therefore not persuasive. The applicant argues regarding component B of Weber with component A)b)2. Again, Weber is combined with the Schmid et al. references for components A)b)1 and A)b)2. Arguments directed to only Weber for this component or motivation that ignore the teachings of the Schmid references do not address the full scope of the rejection nor the motivation the ordinary skilled artisan would have found within the Schmid references when taken with the teachings of Weber.

The examiner does not dispute that one of skill in the art can distinguish partly crystalline polymers from purely amorphous polymers. However, the above issue is one of claim interpretation and claim scope. As stated above, partly crystalline polyamides necessarily have some amorphous character. The examiner notes the supplied definition of "amorphous". The

amorphous domains noted above do not have crystallinity. The examiner notes the supplied definition of "amorphous domain". The examiner notes the applicant's argument regarding amorphous versus partly crystalline polymers. However, the instant specification does not define amorphous polyamide as excluding partly crystalline polyamide which has amorphous domains. Neither does the supplied definition of amorphous, which merely defines amorphous but does not define the instantly claimed "amorphous polyamide" as excluding partly crystalline polyamide. It is axiomatic that the claims be interpreted in their broadest reasonable scope. The examiner maintains that the claim language "amorphous polyamide" continues to include partly crystalline polyamides because they contain amorphous domains necessarily and are thus encompassed by "amorphous polyamide" which does not recite totally amorphous polyamide nor otherwise exclude some crystallinity. It is noted that Weber encompasses the instantly claimed PA PACM12 at column 2, lines 38 and 44-45, which is further indication that the partially crystalline polyamides of Weber encompass the amorphous polyamides of the instant claims. The applicant's arguments have been fully considered but are not persuasive for the reasons stated above. This rejection is therefore maintained.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick D. Niland whose telephone number is 571-272-1121. The examiner can normally be reached on Monday to Thursday from 10 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached on 571-272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Patrick D Niland/
Primary Examiner,
Art Unit 1796